

The Rule 32 Committee, chaired by Justice Roger Burdick, met on May 24, 2016, and voted to recommend the following amendments to ICAR 32.

(1) Subsection (d)(9) addresses access to exhibits. It provides that before final disposition by the trial court, access to exhibits is allowed only with the permission of the custodian judge subject to any conditions set by the judge. It was pointed out that the authority of judges to set conditions on access to exhibits following final disposition should also be recognized. The main concern arose with regard to capital cases, in which appeals and other post-trial proceedings may continue for several years, and retrial or resentencing is always a possibility. It is important to maintain the integrity of exhibits and to protect the chain of custody. But the same concern may apply in other criminal and civil cases. The amendment would permit the custodian judge to set reasonable conditions on access to exhibits following final disposition.

(2) The Juvenile Justice Advisory Team has recommended extensive revisions to subsection (g)(9)(B), concerning access to records in Juvenile Corrections Act cases. The present rule provides that all records are sealed until the admit/deny hearing. At that time the court makes a decision as to whether the records in the case will be exempt from disclosure. If the juvenile is 14 or older and is charged with a felony, the court can order that the records be exempt only if it finds that extraordinary circumstances exist that justify keeping the records confidential. In other JCA cases, the court may order that the records be exempt by making such determination in a written order.

The proposal would provide that records in JCA proceedings are exempt from disclosure, unless the court finds, upon motion by the prosecuting attorney, interested party, or other interested persons that the public's interest in the right to know outweighs the adverse effect of the release of the records on the juvenile's rehabilitation and competency development. It lists several factors that the court may consider in making this determination. It also provides that certain specified officials may have access to the information, and specifies the information that victims are entitled to receive.

The basis for the proposal is the recognition of the harm that can be inflicted on young lives by the disclosure of information in JCA cases. This has been a subject of nationwide concern, and instances of harm done to minors in Idaho by the disclosure of this information was discussed. Courts would still have the ability to grant access to records where the balancing test prescribed by the rule favored disclosure.

It should be noted that this rule would differ even more than the current rule from the provisions of I.C. § 20-225, the statute that addresses access to records in JCA cases. Concerns were expressed by some members of the Committee as to whether this proposal would set unnecessarily high barriers to access to information in JCA cases. The Committee ultimately voted to recommend this proposal, 7-4.

(3) SB 1373, passed at the 2016 Legislative Session, permits persons who have been the victims of malicious harassment, stalking, or telephone harassment, to petition the court for protection orders. The procedures are similar to those in domestic violence cases. Therefore, the Committee has proposed that subsection (g)(16) be amended to include these protection order cases. The records in such cases would be exempt from disclosure except for orders of the court.

(4) We will at some point have victim information and restitution sheets to aid the court in contacting victims and forwarding restitution. The Committee has recommended amending subsection (g)(17)(F) to make this sheets, as well as family law case information sheets, exempt from disclosure.

(5) The Committee is also recommending amending subsection (g)(29) to extend its protection of personal identifying information beyond parties. The last four numbers of Social Security numbers and any personal identifying numbers would be exempt from disclosure. In addition, the Committee voted to recommend making street addresses and telephone numbers of parties, their family members, and crime victims exempt from disclosure.